

RECEIVED
ASHEVILLE, N.C.
JUN 16 2004
Clerk, U. S. Dist. Court
W. Dist. of N. C.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
FILE NO. 1:04CV112

FILED
CHARLOTTE, N. C.

JUN 17 2004

U. S. DISTRICT COURT
W. DIST. OF N. C.

WADE D. BURNS,)
Plaintiff)
v.)
TOWN OF MONTREAT; TOWN OF)
BLACK MOUNTAIN; DAN CORDELL,)
Individually and in his official capacity as)
Building Inspector; and, TERESA REED,)
individually and in her official capacity as)
Zoning Official,)
Defendants)

NOTICE OF REMOVAL

NOW COME Defendants, by and through undersigned counsel and hereby file this Notice of Removal of the above described action to the United States District Court for the Western District of North Carolina, Asheville Division, from the General Court of Justice, Superior Court Division, Buncombe County, North Carolina, where the action is now pending, as provided by Title 28, United States Code, Chapter 89 and state as follows:

1. All Defendants in the above-entitled action join in this notice.
2. The above entitled action was commenced in the General Court of Justice, Superior Court Division, Buncombe County, State of North Carolina and is now pending in that court. Process was served on Defendants Town of Montreat, Town of Black Mountain and Dan Cordell on or about May 19, 2004 and Defendant Teresa Reed on May 20, 2004.
3. The action is a civil action concerning allegations by the Plaintiff of defamation, tortious interference with contract, civil conspiracy, and violation of Plaintiff's constitutional rights of free speech, due process and equal protection of the laws under the First and Fourteenth Amendments to the United States Constitution. The United States District Court for the Western

District of North Carolina has jurisdiction by reason of 28 U.S.C. §1441, in that the action arose, in part, under the laws of the United States and that, as is stated in the Complaint, Plaintiff has based his claims for relief against Defendants, by virtue of and under federal statutes and acts of Congress and the United States Constitution.

4. Defendants further allege that the action was commenced by the filing of the Complaint on May 13, 2004, and the service of process on these Defendants on or about May 19 and 20, 2004, and that the time has not elapsed within which Defendants are permitted to file this Notice of Removal of this action to this Court.

5. A copy of all process, pleadings, and orders served upon Defendants are filed with this notice.

6. Defendants will give written notice of the filing of this notice to Plaintiff as required by 28 U.S.C. §1446(d).

7. A copy of this notice will be filed with the Clerk of Superior Court of Buncombe County, North Carolina, as required by 28 U.S.C. §1446(d), via the correspondence attached hereto as Exhibit "A" and incorporated as if full set forth herein.

WHEREFORE, Defendants hereby request that this action proceed in this Court as an action properly removed to it.

This the 16th day of June, 2004.

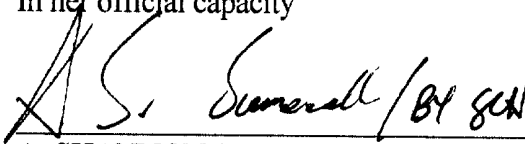
SUMRELL, SUGG, CARMICHAEL, HICKS & HART, P.A.
Attorneys for Defendants Town of Black Mountain and
Dan Cordell in his official capacity

By: 

SCOTT C. HART
State Bar No. 19060
Post Office Drawer 889
New Bern, North Carolina 28563
(252) 633-3131

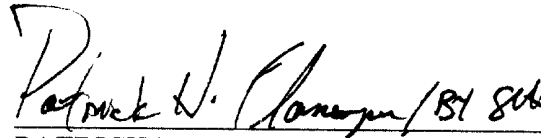
CRANFILL, SUMNER & HARTZOG, L.L.P.
Attorneys for Defendants Town of Montreat and Teresa Reed
In her official capacity

By:

/BY SCH

A. SHANNON SUMERELL
State Bar No. 28108

By:

/BY SCH

PATRICK H. FLANAGAN
State Bar No. 17407
Post Office Box 30787
Charlotte, NC 28230
(704) 332-8300

CARTER & KROPELNICKI, P.A.
Attorneys for Defendant Dan Cordell in his individual capacity

By:

/BY SCH

STEVEN KROPELNICKI
State Bar No. 6713
181 Charlotte Street
Asheville, NC 28801
(828) 252-9804

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **NOTICE OF REMOVAL** was served upon counsel of record by depositing the same in a postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service, New Bern, North Carolina, and addressed to:

C. Frank Goldsmith, Jr.
Post Office Box 1107
Marion, NC 28752

This the 16th day of June, 2004.

SUMRELL, SUGG, CARMICHAEL, HICKS & HART, P.A.
Attorneys for Defendants Town of Black Mountain and
Dan Cordell in his official capacity

By: 

SCOTT C. HART
State Bar No. 19060
Post Office Drawer 889
New Bern, North Carolina 28563
Telephone: (252) 633-3131

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SUMRELL, SUGG, CARMICHAEL, HICKS & HART, P.A.

ATTORNEYS AT LAW

416 Pollock Street

New Bern, North Carolina 28560

www.nclawyers.com

RAYMOND E. SUMRELL*
JAMES R. SUGG
FRED M. CARMICHAEL
JIMMIE B. HICKS, JR.
SCOTT C. HART
JILL QUATTLEBAUM BYRUM†
AREY W. GRADY, III
B. KYLE DICKERSON
RON D. MEDLIN, JR.

P.O. DRAWER 889
NEW BERN, NC 28563
(252) 633-3131

FACSIMILE
(252) 633-3507

E-MAIL ADDRESS
shart@nclawyers.com

June 16, 2004

* Retired

†Licensed also in South Carolina

Honorable Robert Christy, Jr.
Buncombe County Courthouse
60 Court Plaza
Asheville, NC 28801-3582

RE: Wade D. Burns v. Town of Montreat, et al
Buncombe County File No. 04 CVS 02058
Our File No. 52835.07

Dear Mr. Christy:

Enclosed please find a copy of the Notice of Removal, the original of which is being filed with the United States District Court, with regard to the above referenced case. By copy of this letter, I am serving Plaintiff's counsel with a copy of same.

I thank you in advance for your attention to these matters. Please call me if you have any questions at (800) 272-8369.

Yours very truly,


Scott C. Hart

SCH/tzw

Enclosures

Cc: C. Frank Goldsmith, Jr., Esq. (w/encl.)
A. Shannon Sumerell, Esq. (w/encl.)
Steven Kropelnicki, Esq. (w/encl.)
Patrick H. Flanagan, Esq. (w/encl.)

Honorable Robert Christy, Jr.
June 16, 2004
Page 2

Mr. Dan Cordell (w/encl.)
Mr. Anthony N. Caudle (w/encl.)
Ronald E. Sneed, Esq. (w/encl.)
Honorable Frank Johns, U.S.D.C. Clerk (w/encl.)
Mr. William P. Varley, File No. K14-009641 (w/encl.)

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF BUNCOMBE MAY 26 PM 1:30 SUPERIOR COURT DIVISION
FILE NO. 04-CVS-02058
BUNCOMBE COUNTY, C.S.C.

WADE D. BURNS, BY _____)

Plaintiff,)

v.)

AFFIDAVIT OF SERVICE OF
PROCESS BY CERTIFIED MAIL

TOWN OF MONTREAT; TOWN OF)

BLACK MOUNTAIN; DAN)

CORDELL, individually and in his)

official capacity as Building Inspector;)

and TERESA REED, individually and)

in her official capacity as Zoning Official,)

Defendants)

I, C. Frank Goldsmith, Jr. of the firm of GOLDSMITH, GOLDSMITH &
DEWS, P.A., counsel of record for the plaintiff, Wade D. Burns, hereby certify that the
defendants, Town of Montreat, Town of Black Mountain, Dan Cordell, and Teresa Reed,
were served with process in the above action, pursuant to Rule 4(j), North Carolina Rules
of Civil Procedure, in the following manner:

On, May 17, 2004, I deposited copies of the civil summons and complaint in the
United States Post Office at Marion, North Carolina, for mailing by certified mail, return
receipt requested, in a properly franked envelope addressed to each defendant as follows:

Town of Montreat
c/o Town Manger, Pam Snypes
P.O. Box 423
Montreat, NC 28757

Town of Black Mountain
c/o Town Manager, Anthony N. Caudle
102 Montreat Road
Black Mountain, NC 28711

FILED
MAY 26 PM 1:3
UNCONDE COUL

Dan Cordell
c/o Town of Black Mountain
106 Montreat Road
Black Mountain, NC 28711

Teresa Reed
c/o Town of Montreat
P.O. Box 423
Montreat, NC 28757

On May 19, 2004, defendant, Town of Montreat in fact received copies of the
aforementioned documents as evidenced by the attached green genuine postal registry
receipt signed by Pam Snypes, defendant's agent.

On May 19, 2004, defendant Town of Black Mountain in fact received copies of the
aforementioned documents as evidenced by the attached green genuine postal registry
receipt signed by Mona Robinson.

On May 19, 2004, defendant Dan Cordell in fact received copies of the
aforementioned documents as evidenced by the attached green genuine postal registry
receipt signed by Rosa Hilbert.

On May 20, 2004, defendant Teresa Reed in fact received copies of the
aforementioned documents as evidenced by the attached green genuine postal registry
receipt signed by said defendant.

This the 25th day of May, 2004.



C. FRANK GOLDSMITH, JR.

Post Office Box 1107

57 South Main Street

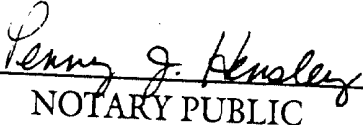
Marion, North Carolina 28752

Telephone: (828) 652-3000

Attorney for Plaintiff

AFFIRMED AND SUBSCRIBED

before me, this the 25th day of
May, 2004.


NOTARY PUBLIC

My Commission Expires: 9-1-08

FILED

MAY 25 PM 1:3

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> <i>Pam Snypes</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: Town of Montreat c/o Town Manager, Pam Snypes P.O. Box 423 Montreat, NC 28757</p>		<p>B. Received by (Printed Name) <i>[Signature]</i></p>	<p>C. Date of Delivery 5/19/04</p>
		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7003 1680 0001 2346 6755</p>			
<p>PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540</p>			

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> <i>Mona Robinson</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: Town of Black Mountain c/o Town Manager, Anthony N. Caudle 102 Montreat Road Black Mountain, NC 28711</p>		<p>B. Received by (Printed Name) <i>[Signature]</i></p>	<p>C. Date of Delivery 5/19/04</p>
		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7003 1680 0001 2346 6779</p>			
<p>PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540</p>			

FILED

JUN 26 PM 1:31

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <i>Rosa Wilbur</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Dan Cordell c/o Town of Black Mountain 106 Montreat Road Black Mountain, NC 28711</p>		<p>B. Received by (Printed Name) _____ C. Date of Delivery <i>5/19/04</i></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p>	
<p>2. Article Number _____ (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, August 2001</p>		<p>Domestic Return Receipt 102595-02-M-1540</p>	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <i>Teresa Reed</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Teresa Reed c/o Town of Montreat P.O. Box 423 Montreat, NC 28757</p>		<p>B. Received by (Printed Name) _____ C. Date of Delivery <i>5/20/04</i></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p>	
<p>2. Article Number _____ (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, August 2001</p>		<p>Domestic Return Receipt 102595-02-M-1540</p>	

STATE OF NORTH CAROLINA

FILED

File No. 4CV
04-CVS-

02058

BUNCOMBE

County

04 MAY 13 PM 1:50

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

WADE D. BURNS

BUNCOMBE COUNTY, C.S.C.

Address c/o C. Frank Goldsmith, Jr.
P.O. Box 1107

City, State, Zip

Marion, NC 28752

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3.

VERSUS

Name Of Defendant(s)

TOWN OF MONTREAT; TOWN OF BLACK MOUNTAIN;
DAN CORDELL, individually and in his
official capacity as Building Inspector; and
TERESA REED, individually and in her official
capacity as Zoning Official

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

TOWN OF MONTREAT
c/o Town Manager, Pam Snypes
P.O. Box 423
Montreat, N.C. 28757

Name And Address Of Defendant 2

TERESA REED
c/o Town of Montreat
P.O. Box 423
Montreat, NC 28757

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

C. FRANK GOLDSMITH, JR.
P.O. Box 1107
Marion, NC 28752
Telephone: (828) 652-3000

Date Issued

5-13-04

Time

1:50

☐ AM ☒ PM

Signature

Blenda Huneyutt

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

STATE OF NORTH CAROLINA

File No.

04-CV-0205

BUNCOMBE

County

FILED

04 MAY 13 PM 1:50

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

WADE D. BURNS

BUNCOMBE COUNTY, C.S.C.

Address

c/o C. Frank Goldsmith, Jr.
P.O. Box 1107

City, State, Zip

Marion, NC 28752

BY

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3,

VERSUS

Name Of Defendant(s)

TOWN OF MONTREAT; TOWN OF BLACK MOUNTAIN;
DAN CORDELL, individually and in his
official capacity as Building Inspector; and
TERESA REED, individually and in her official
capacity as Zoning Official

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

TOWN OF BLACK MOUNTAIN
c/o Town Manager, Anthony N. Caudle
102 Montreat Road
Black Mountain, NC 28711

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

C. FRANK GOLDSMITH, JR.
P.O. Box 1107
Marion, NC 28752
Telephone: (828) 652-3000

Date Issued

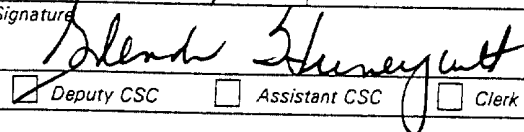
5-13-04

Time

1:50

☐ AM ☒ PM

Signature

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

STATE OF NORTH CAROLINA

FILED

File No.

04-CV-4CV 0205

BUNCOMBE

County

04 MAY 13 PM 1:50

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

WADE D. BURNS

BUNCOMBE COUNTY, C.S.C.

Address

c/o C. Frank Goldsmith, Jr.

P.O. Box 1107

BY

City, State, Zip

Marion, NC 28752

VERSUS

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3,

Name Of Defendant(s)

TOWN OF MONTREAT; TOWN OF BLACK MOUNTAIN;
DAN CORDELL, individually and in his
official capacity as Building Inspector; and
TERESA REED, individually and in her official
capacity as Zoning Official

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

DAN CORDELL
c/o Town of Black Mountain
106 Montreat Road
Black Mountain, NC 28711

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

C. FRANK GOLDSMITH, JR.

P.O. Box 1107

Marion, NC 28752

Telephone: (828) 652-3000

Date Issued

5-13-04

Time

1:50

☐ AM☒ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

STATE OF NORTH CAROLINA

FILED

File No.

04-4CV

02058

BUNCOMBE

County

04 MAY 13 PM 1:50

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name Of Plaintiff

WADE D. BURNS

BUNCOMBE COUNTY, C.S.C.

Address

c/o C. Frank Goldsmith, Jr.
P.O. Box 1107

BY

City, State, Zip

Marion, NC 28752

VERSUS

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3,

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

Name Of Defendant(s)

TOWN OF MONTREAT; TOWN OF BLACK MOUNTAIN;
DAN CORDELL, individually and in his
official capacity as Building Inspector; and
TERESA REED, individually and in her official
capacity as Zoning Official

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

TOWN OF MONTREAT
c/o Town Manager, Pam Snypes
P.O. Box 423
Montreat, N.C. 28757

Name And Address Of Defendant 2

TERESA REED
c/o Town of Montreat
P.O. Box 423
Montreat, NC 28757

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

C. FRANK GOLDSMITH, JR.
P.O. Box 1107
Marion, NC 28752
Telephone: (828) 652-3000

Date Issued

5-13-04

Time

1:50

☐ AM ☒ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 04-CVS- **4CV 02058**

JOE D. BURNS,

Plaintiff,

v.

TOWN OF MONTREAT; TOWN OF
BLACK MOUNTAIN; DAN
DELL, individually and in his
official capacity as Building Inspector;
TERESA REED, individually and
in official capacity as Zoning Official,

Defendants

BY

BUNCOMBE COUNTY, C.S.C.

04 MAY 13 PM 1:50

FILED

COMPLAINT
JURY TRIAL DEMANDED

Plaintiff, for his claims for relief against the defendants, alleges:

I. NATURE OF THE ACTION

1. This is an action brought under the common law of North Carolina and the
Constitutions of the United States and of North Carolina seeking compensatory damages
and equitable relief from all defendants, and punitive damages from the individual
defendants, for defamation, tortious interference with contract, civil conspiracy, and denial
of plaintiff's constitutional rights to equal protection of the laws, due process of law, and
speech.

II. PARTIES

2. Plaintiff is a citizen and resident of Buncombe County, North Carolina, and
Town of Montreat.

3. Defendant Town of Montreat is a municipal corporation and a "city" as defined by N.C. Gen. Stat. § 160A-1(2). Said defendant employs a Zoning Official and, by agreement with defendant Town of Black Mountain, a Building Inspector, over each of whom it exercises supervisory responsibility.

4. Defendant Town of Black Mountain is a municipal corporation and a "city" as defined by N.C. Gen. Stat. § 160A-1(2). At times relevant to this complaint, said defendant agreed to provide to the defendant Town of Montreat building inspection and construction permitting services, to be performed by its agent and employee, defendant Daniel I. Cordell. Upon information and belief, said defendant employed and supervised defendant Cordell in the provision of such services to the Town of Montreat and its citizens shared, jointly with defendant Town of Montreat, supervisory responsibility for his activities.

5. Defendant Daniel I. Cordell (hereinafter sometimes referred to as "Cordell") is a citizen and resident of Buncombe County, North Carolina. Said defendant is and was, upon information and belief, at all times relevant to this complaint jointly employed by defendant Towns of Black Mountain and Town of Montreat as the towns' Building Inspector. At all times relevant to this complaint, defendant served as the Building Inspector for the Town of Montreat and, unless otherwise indicated herein, acted in such capacity in his dealings with the plaintiff.

6. Defendant Teresa Reed (hereinafter sometimes referred to as "Reed") is a woman and resident of Buncombe County, North Carolina. Said defendant is and was, on information and belief, at all times relevant to this complaint employed by defendant Town of Montreat. At all times relevant to this complaint, defendant was the Zoning Administrator as well as the Town Clerk for the Town of Montreat and, unless otherwise indicated, acted in one or both of such capacities in her dealings with the plaintiff.

7. Each of the defendants is a "person" within the meaning of the Civil Rights Act of 1871, 42 U.S.C. § 1983, and is capable of being sued for the claims asserted herein.

8. The acts and omissions of the defendants complained of herein were taken under color of state law, statute, ordinance, regulation, custom, or usage, and the individual defendants were at all times acting within the scope of their employment with defendants Town of Montreat and Town of Black Mountain. While the acts and omissions complained of herein were carried out under color of state law, they had no justification or excuse in that they instead were illegal, improper, and beyond the scope of the defendants' proper authority in administering and enforcing the laws over which they have jurisdiction. In addition, the actions of the defendants were undertaken with malice and ill-will against the plaintiff, in gross violation of their rights and duties as public servants.

9. Upon information and belief, defendants are protected by one or more policies of liability insurance purchased pursuant to N.C. Gen. Stat. § 160A-485 or other applicable law with respect to all acts and omissions complained of herein, or participate in

ernment risk pool pursuant to Article 23 of Chapter 58 of the North Carolina General
tes, and to such extent, defendants have waived any official, sovereign, or
nmental immunity to which they might otherwise be entitled in their official
ities. To the extent that may be required by law, plaintiff hereby waives his right to a
ial on all issues of law or fact relating to insurance coverage.

III. FACTUAL BACKGROUND

10. Plaintiff is a fully qualified and experienced architect who holds a license from
orth Carolina Board of Architecture to practice his profession in this State. After a
r of years of practicing architecture in the State of Georgia, where he enjoyed a well-
ed reputation not only for his professional skill, but also for his personal integrity, in
plaintiff moved to the Town of Montreat to live and to practice architecture, working
as an employee of an architect in Asheville before establishing his own practice.

11. Plaintiff was appointed to serve on the Planning and Zoning Commission of
endant Town of Montreat, and ultimately was twice elected as the Commission's
In the course of his service on the Commission, plaintiff became concerned that the
dministration was, in some cases, operating illegally, unethically, and in violation of
inciples of open government established under North Carolina law by holding
gs in violation of North Carolina's Open Meetings Law, by refusing to share with the
agenda information that was supposed to be available to the public, by engaging in
d viewpoint discrimination in determination which members of the public and of

Planning and Zoning Commission would be heard, by acting in matters that were and the jurisdiction of the Town Commissioners, and other violations. Plaintiff voiced concerns, which were matters of public concern to the citizens of Montreat, both in meetings and in other communications with the town administration and others, sharing the Board of Commissioners and other members of the administration advice plaintiff received from the Institute of Government that validated his concerns.

12. Plaintiff's advocacy for honest and open government offended certain members of the town's governing body and administration, including the then (and now) mayor, the then vice-mayor, defendant Daniel I. Cordell, the town's Building Director, and defendant Teresa Reed, the town's Zoning Official and Town Clerk. In retaliation for plaintiff's outspokenness against their unlawful actions, the defendants, acting singly or in concert with the Town of Montreat's mayor, vice-mayor, and other persons, took action to seek the removal of plaintiff from the Planning and Zoning Commission, including seeking to hold an illegal closed session for the purpose of considering such removal. When plaintiff indicated that he would not voluntarily resign, the Town of Montreat then took the drastic step of voting to dissolve the Planning and Zoning Commission altogether. Rather than see the citizens of Montreat harmed by such vindictous and mean-spirited action, plaintiff resigned his position but continued his criticism of the defendants' unlawful and unethical conduct.

13. In addition to seeking plaintiff's removal from the Planning and Zoning Commission, defendants began a campaign of activity designed to discredit plaintiff as an architect, destroy his reputation as an individual and as a professional, and drive him from attempting to practice his profession in the Town of Montreat.

14. The defendants' campaign against plaintiff has included, without limitation, the following acts:

- a. Defendants, acting together and with others, have made false and defamatory statements about plaintiff in public meetings as well as in private communications with citizens of Montreat, including false statements about plaintiff's licensure and qualifications to practice his profession;
- b. Defendants, acting individually or in concert, have written defamatory letters concerning plaintiff to citizens of Montreat, as more specifically set forth hereinafter;
- c. Defendants undertook to remove plaintiff from his position as Chair and as a member of the Planning and Zoning Commission in retaliation for plaintiff's speaking out on matters of public concern;
- d. Defendants have acted, and continue to act, to undermine plaintiff's architecture practice and to deprive him of the means of earning his livelihood by raising spurious and illegal objections to plans proposed by plaintiff on behalf of his clients, causing costly delays in the construction of improvements to the clients' properties. On at least three occasions, the clients were required to appeal formally to the Board of Adjustment of the Town of Montreat before receiving permission to improve their property;
- e. Defendants apply different criteria to judge whether proposed improvements to the properties of plaintiffs' clients satisfy the requirements of the Town of Montreat's code and ordinances than are applied to proposals and applications submitted by other property owners and their agents;

- f. Defendants apply different procedures to appeals by plaintiff or his clients from their unlawful acts than are applied to other persons who appeal the decisions of the Zoning Official or other agents of the Town of Montreat.
 - g. Defendants have retaliated against plaintiff for challenging their decisions in successful appeals by raising petty and spurious objections to plans submitted by plaintiff on behalf of his clients, which objections are not raised against plans submitted by others.
15. These unlawful acts of the defendants are ongoing and will continue unless plaintiffs are restrained, and such acts have caused plaintiff substantial economic loss and damage to his personal and professional reputations.
16. By way of illustration and not of limitation of defendants' application of differently different standards against plaintiff and his clients, plaintiff offers the following examples of such discriminatory practices:
- a. Two of plaintiff's clients, Alvin and Alice Sudduth, hired plaintiff to design a cottage to be constructed on their property on Chapman Road. Defendant Reed, acting on behalf of defendant Town of Montreat, interposed spurious objections and obstacles to the proposed construction that have not been interposed in similar situations involving other property owners acting either individually or represented by other agents than plaintiff, including refusing to grant zoning compliance approval and refusing to grant the Sudduths permission to cross a public right-of-way to build a driveway to their cottage. Furthermore, defendant Reed delayed for nearly three months before informing the Sudduths that their Certificate of Zoning Compliance for setback approval was denied, despite having earlier told them that such a certificate could be issued, causing them substantial expense as architectural development of the plans continued under the belief that approval was forthcoming. In these and other ways, the Sudduths were informed by defendants Reed and the Town of Montreat that they were paying a price for having selected plaintiff as their architect.
 - b. Parkes and Leslie Dibble hired plaintiff to design an addition to their cottage and concrete steps and stone walls from their house to a new parking area on

their property at 408 Appalachian Way. The steps were needed as a matter of safety and convenience because of the steep slope from the house to the parking area. Defendant Reed, acting on behalf of the Town of Montreat, denied the Dibbles a Certificate of Zoning Compliance because the steps and walls would "extend into the side setback." However, numerous other property owners, not represented by plaintiff, had been allowed to build steps and walls that extended into the setback areas of their property, and plaintiff is informed and believes that defendants had never before denied a Certificate of Zoning Compliance simply for that reason. The Dibbles were required, at significant expense and delay, to appeal defendants' decision to the Zoning Board of Adjustment, which, after hearing the facts, reversed defendants' decision, finding that the evidence revealed "a pattern of inconsistency that impinges on the concept and application of equity in applying restrictions to the use of real property, housing, etc., in the Town of Montreat in recent years."

- c. Ms. Susan W. Neville engaged plaintiff as architect (and owner's agent) to design a new gravel driveway and parking area to improve access to her home on Virginia Road. The Town of Montreat denied Ms. Neville's application to cut several small trees that were in the area of access to the proposed driveway and parking area. Plaintiff, on behalf of Ms. Neville, attempted to present the issue to the Board of Commissioners, but the former vice-mayor and one of the commissioners stated that they did not want to hear anything the plaintiff had to say; several of the commissioners literally turned their backs to the plaintiff as he was attempting to speak; and the commissioners later also voted not to allow plaintiff to speak during the part of the meeting reserved for public comment.
- d. Defendant Reed, acting on behalf of the Town of Montreat, also denied plaintiff's application on behalf of Ms. Neville for a Certificate of Zoning Compliance. The latter was denied on the ground that the proposed driveway's bank slope would exceed the minimum ratio of horizontal distance to vertical distance of 2:1 under the town's regulations. Ultimately, defendant Reed issued a Certificate of Compliance conditioned upon such a ratio being maintained in the cut banks, despite the fact that observing the ratio would vastly increase the expense of the project and would require the removal of many more trees than would otherwise be the case, and despite the fact that numerous other property owners, not represented by plaintiff as their agent or architect, had been permitted to maintain slopes with a ratio greater than 2:1. Ms. Neville, too, was forced to appeal defendants' decision

to the Montreat Zoning Board of Adjustment, at great expense and delay. On appeal, defendants unsuccessfully attempted to enforce against Ms. Neville a procedural timeliness rule that had never been invoked against other property owners. The Board nevertheless rejected the time bar and reversed defendants' decision to require the steeper slope.

- e. Defendant Cordell, without justification or excuse and in violation of applicable code provisions and ordinances, issued two stop work orders against the Neville property described above, refused to issue three requested building permits, and revoked two building permits that had been issued, all in personal retaliation against plaintiff for his protected conduct as alleged above. In these actions, defendant Cordell acted on behalf of the Town of Montreat and the Town of Black Mountain.
- f. Defendant Cordell, acting on behalf of the Town of Montreat and the Town of Black Mountain, has applied, uniquely to plaintiff and his clients, a policy of refusing to issue permits to which plaintiff and his clients were entitled without first personally confirming with subcontractors that they have been engaged to do the work.
- g. Joanne Clark-West engaged plaintiff's services to improve her residence. Defendant Cordell, on behalf of the Town of Montreat and the Town of Black Mountain, failed a set of wooden exterior "landscape" steps that were code-compliant or code-exempt, as a part of said defendants' pattern of retaliation against plaintiff. Plaintiff is informed and believes that similar steps have been constructed without opposition by other property owners in Montreat.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: DEFAMATION

17. On May 14, 2003, as part of defendants' plan or scheme to retaliate against plaintiff for his criticism of their unlawful conduct, defendant Cordell published a letter to Mayor and members of the Montreat Town Council seeking the removal of plaintiff from the Montreat Planning and Zoning Commission. In the letter, which Cordell

ssly asked be spread upon the public record as part of the Town Council's official
tes, Cordell accused plaintiff of "blatantly and self-servingly" using his position to
e his own personal agenda, making "false accusations against the Council, Mayor, staff
ttorney," and "dissemination of incorrect and misleading information which he has
ed to serve his purposes." A copy of the letter is attached as Exhibit A.

18. Upon information and belief, defendant Reed prepared and published to
bers of the Town Council, and possibly to others, a separate, unsigned, anonymous
ment that alleged numerous violations of procedure by plaintiff in conducting meetings
Planning and Zoning Commission, for the purpose of obtaining the removal of
iff from the Commission.

19. By letter dated June 1, 2003, seven Montreat property owners wrote to
dant Reed as Zoning Administrator, with a copy to the Mayor, complaining of a
y dwelling that had been allowed to remain for more than a year wrapped in "Pink
," a plastic moisture barrier designed to protect a building, which must itself be
ted from the elements by exterior siding, in violation of Montreat's building code and
nces. Plaintiff was not a signatory to the letter and was not then otherwise involved
citizens' complaint.

20. On June 5, 2003, defendant Cordell published a letter to Mr. and Mrs.
m T. DuBose, with copies to six other individuals, which, for some reason, sought to

plaintiff into the controversy, and which made the following statements regarding plaintiff (a copy of the letter is attached as Exhibit B):

- a. That plaintiff had made reports that were "false, inaccurate, and misleading";
 - b. That plaintiff, a licensed architect, had an "incorrect and false understanding of the North Carolina building code and the Montreat zoning ordinance";
 - c. That, referring again to plaintiff, "[i]t is ludicrous to me that someone who calls himself an architect has such pitifully lacking knowledge of the codes under which he 'works'";
 - d. That Wade Burns (plaintiff) was "dishonest"; and
 - e. That plaintiff had given information that was "absolutely false and incorrect misinformation."
21. None of the foregoing statements made by defendants was true.
22. The defamatory statements made concerning plaintiff were uttered and shed with malice.
23. The defamatory statements published concerning plaintiff were made with l and wanton disregard as to their truth or falsity.
24. The defamatory statements concerning plaintiff tended to subject the plaintiff blic ridicule, contempt, hatred, and disgrace because of the conduct falsely attributed m. Moreover, the false statements included accusations that plaintiff was dishonest ad made false reports, which were accusations of moral turpitude. In addition, se the false statements concerned plaintiff's alleged dishonesty, ignorance, and ppetence as an architect, the false statements injured plaintiff in his business and

sion. For all of these reasons, the untrue and defamatory statements published about plaintiff by defendants constitute slander per se, which is actionable under the common law of North Carolina.

25. At all times relevant to this action, and prior to the defamatory words spoken to him by defendants, plaintiff enjoyed an excellent reputation as a person of good character, and plaintiff was known as an architect of great integrity and competence.

26. The acts complained of herein were undertaken by defendants Cordell and Reed in his or her official capacity and, upon information and belief, were supported and encouraged by the Mayor of the Town of Montreat and possibly other members of the Board of Directors of the Town of Montreat, and were permitted to occur as a result of the negligence of Black Mountain's failure to supervise its employee, and such conduct is therefore attributable to both defendant municipalities.

27. Alternatively, the actions of defendants Cordell and Reed were undertaken for reasons of personal malice and spite against plaintiff, and out of a motive unlawfully to interfere with plaintiff for the exercise of his constitutionally protected right to free speech and not for legitimate business or public policy reasons.

28. As a result of the defamatory statements published about plaintiff by defendants, plaintiff's good name and reputation were injured and damaged in the minds of those who read or heard the publication of the defamatory statements, and others who heard of such publication. As a result of these things, plaintiff has suffered great

arrassment and humiliation, his good reputation has been vilified, and he has suffered
al anguish and distress, as well as loss of income, all to his damage in a sum in excess of
Thousand Dollars.

29. The defendants, in making and publishing their libelous statements
rning plaintiff, acted with actual malice and with knowledge of the falsity of the
nents or with reckless disregard of whether the statements were true or false, and
iff is entitled to recover of the individual defendants, jointly and severally, a further
n excess of ten thousand dollars as punitive damages.

SECOND CLAIM FOR RELIEF:
VIOLATION OF RIGHT OF FREE SPEECH

30. The preceding allegations of this complaint are incorporated herein by
nce.

31. Defendants' conduct in retaliating against plaintiff by seeking to remove him
office and by undermining plaintiff's ability to practice his profession, as alleged above,
se of his speech on matters of public concern, violates plaintiff's right to freedom of
and freedom to petition the government for the redress of grievances, protected by
rst Amendment to the United States Constitution and by Article I, Sections 12 and
the North Carolina Constitution.

32. At all times material to this complaint, defendants (the defendant towns
through their policymaking officials, defendants Reed and Cordell, and the mayor
ce-mayor of the Town of Montreat) were responsible for the formulation and

tion of policies, practices, and customs, including a failure of supervision and control
e activities of their agents, that were a direct and proximate cause of the
stitutional deprivation of plaintiff's freedom of speech and petition, and the other
tions of his civil and constitutional rights alleged herein.

33. As a proximate result of the violation of plaintiff's civil rights alleged herein,
iff suffered damage to his personal and professional reputations, was unlawfully
ved of his constitutional freedoms, was prevented from practicing his profession and
by sustained loss of earnings, and suffered mental and emotional distress,
rassment, humiliation, and other injuries, all to his damage in a sum in excess of Ten
sand Dollars.

34. Because of the aggravating factors that the defendants' actions were
taken with malice and that their conduct was willful and wanton, plaintiff is entitled to
er punitive damages from the defendants in their individual capacities in an amount to
etermined by the trier of fact in accordance with applicable law.

**THIRD CLAIM FOR RELIEF:
VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS**

35. The preceding allegations of this complaint are incorporated herein by
reference.

36. Article I, section 19 of the North Carolina Constitution, the "Law of the
" clause, provides that "no person shall be . . . in any manner deprived of his life,
; or property, but by the law of the land." The Fourteenth Amendment to the

d States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law."

37. Defendants' arbitrary and capricious treatment of plaintiff and of the clients presents violates both plaintiff's right to due process and his right to equal protection laws. "The Due Process Clause was intended to prevent government officials 'from using [their] power, or employing it as an instrument of oppression.'" *Dobrowolska v. [redacted]*, 138 N.C. App. 1, 13, 530 S.E.2d 590, 599 (N.C. App. 2000) (internal citations omitted). "Arbitrary and capricious acts by government are also prohibited under the Equal Protection Clauses of the United States and the North Carolina Constitutions. . . . The purpose of the Equal Protection Clause . . . is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express enactment of a statute or by its improper execution through duly constituted agents." *Id.*, 138 N.C. App. at 14, 530 S.E.2d at 599 (internal citations omitted). The guarantees of equal protection of the laws in the state and federal constitutions are resolved through the same analysis, and a "class of one" is sufficient to invoke the protection of the Equal Protection Clause. *Toomer v. Garrett*, 155 N.C. App. 462, 476-77, 574 S.E.2d 76, 88-89 (2002).

38. The arbitrary and discriminatory treatment of plaintiff was directed and/or controlled by the highest policymaking officials of the defendant Town of Montreat with respect to the relevant area of operations (building and zoning compliance), and was caused in part by the failure of the defendant Town of Montreat to supervise the activities of its

and employee, defendant Cordell, and thus such treatment represents the official
is of the defendant towns. Defendants are therefore directly responsible for the
lation and execution of policies and practices that were a direct and proximate cause
unconstitutional deprivation of plaintiff's rights of due process and equal protection.

39. As a proximate result of the violation of plaintiff's civil rights alleged herein,
ff suffered damage to his personal and professional reputations, was unlawfully
ed of his constitutional freedoms, was prevented from practicing his profession and
y sustained loss of earnings, and suffered mental and emotional distress,
rassment, humiliation, and other injuries, all to his damage in a sum in excess of Ten
and Dollars.

40. Because of the aggravating factors that the defendants' actions were
aken with malice and that their conduct was willful and wanton, plaintiff is entitled to
punitive damages from the defendants in their individual capacities in an amount to
rmined by the trier of fact in accordance with applicable law.

FOURTH CLAIM FOR RELIEF: TORTIOUS INTERFERENCE WITH CONTRACT

41. The preceding allegations of this complaint are incorporated herein by
ce.

42. Plaintiff contracted with each of the clients identified herein, and with other
s, to serve as their architect.

43. Defendants, by their actions as set forth herein, willfully, maliciously, and out just cause or legal excuse interfered with the contracts for professional services between plaintiff and his clients.

44. As a proximate result of defendants' unlawful actions, plaintiff has suffered loss of the benefit of his contracts for professional services, has suffered other lost business opportunities, and has suffered lost income, mental and emotional distress, harassment, humiliation, and other injuries, all to his damage in a sum in excess of Ten thousand Dollars.

45. Because of the aggravating factors that the defendants' actions were taken with malice and that their conduct was willful and wanton, plaintiff is entitled to recover punitive damages from the defendants in their individual capacities in an amount to be determined by the trier of fact in accordance with applicable law.

FIFTH CLAIM FOR RELIEF: CIVIL CONSPIRACY

46. Plaintiff incorporates herein by reference the allegations of each of the following paragraphs of this complaint.

47. Each of the defendants or their agents, together or with one or more persons in concert with them, conspired to commit the torts and deprivations of civil rights as set forth herein in order to injure him in his profession and to damage his reputation in the eyes of the community.

48. In furtherance of their conspiracy, one or more of the conspirators named and committed one or more overt acts pursuant to their common agreement and in furtherance of their common objective. Such acts include the making of the baseless and defamatory allegations about plaintiff as alleged above; the infringements upon plaintiff's right of free speech on matters of public concern; the attempted ouster of plaintiff from the Planning and Zoning Commission; the discriminatory treatment of plaintiff and his clients in matters of zoning and building code compliance; the deprivation of the property rights of plaintiff's clients in such manner as to damage plaintiff's professional reputation and ability to transact his business; and the other acts of defendants alleged herein.

49. Such conduct by defendants constitutes the tort of civil conspiracy and creates a claim on plaintiff's behalf for damages resulting from such conspiracy and from acts done in furtherance of the unlawful agreement of the defendants.

50. All of the defendant co-conspirators are liable, jointly and severally, for the acts of any one of them done in furtherance of the conspiracy.

51. As a proximate result of defendants' tortious conduct, plaintiff has suffered damages to his income, injury to his reputation, public humiliation and embarrassment, mental anguish, and other injuries, all to his damage in a sum in excess of Ten Thousand Dollars.

52. The defendants or their agents, in conspiring and acting against plaintiff, with actual malice and, in the case of the defamatory statements alleged herein, with knowledge of the falsity of such statements or with reckless disregard of whether the

nents were true or false, and plaintiff is entitled to recover punitive damages from each individual co-conspirator defendant in his or her individual capacity.

WHEREFORE, plaintiff prays the Court:

1. For judgment against the defendants, jointly and severally, in such sum as the trier of fact may determine to be appropriate as compensatory damages for the violation of plaintiff's civil and constitutional rights and defendants' tortious conduct as alleged herein;
2. For judgment against defendants Cordell and Reed in their individual capacities in such sum as a jury shall determine as punitive damages for the violation of plaintiff's civil and constitutional rights and said defendants' tortious conduct as alleged herein;
3. For a declaration that the defendants' actions complained of herein were unlawful and in violation of plaintiff's civil and constitutional rights;
4. For an injunction permanently enjoining and restraining the defendants from arbitrarily, capriciously denying the clients of plaintiff the equal treatment of the laws, and from discriminating against plaintiff and his clients in the application of uniform standards in matters of building code and zoning compliance in the Town of Montreat;
5. For recovery of plaintiff's costs herein, including an award of attorney fees pursuant to 42 U.S.C. § 1988; and
6. For such other relief to which plaintiff may be entitled.

Trial by jury is hereby demanded as to all issues so triable.

This the 12th day of May, 2004.


C. FRANK GOLDSMITH, JR.

GOLDSMITH, GOLDSMITH & DEWS, P.A.
57 South Main Street
Post Office Box 1107
Marion, NC 28752
Telephone: 828-652-3000

Attorney for Plaintiff

May 14, 2003

Mayor Letta Jean Taylor and Montreat Town Council
P. O. Box 423
Montreat, North Carolina 28757

Dear Mayor Taylor and Members of Montreat Town Council,

As a resident of Montreat, I want to express my outrage and disgust with the treatment the Mayor and members of Town Council have received from some of the members of the Montreat Planning and Zoning Commission during the past year. The Mayor and members of the Town Council, as officials elected by the citizens of Montreat, give willingly of their time and resources to serve the citizens of Montreat. For the past year, the Chair of Planning & Zoning, Wade Burns, has blatantly and self-servingly used his appointed position on the Planning and Zoning Commission to pursue his own personal agenda, using offensive and divisive tactics such as false accusations against the Council, Mayor, staff and attorney; inflammatory agitation throughout the community against the Mayor, Council and staff; and dissemination of incorrect and misleading information which he has twisted to serve his purposes.

Any citizen can easily ascertain the facts of the issues by going to the Town office and consulting with the staff, who have documented all of this activity. Or they could scrutinize the minutes of the Planning and Zoning Commission, comparing them to the taped meetings, to ascertain the many conflicts of interest, procedural errors and steering of the committee by its Chair. However, many citizens are being approached in their homes or at community gathering places such as the post office by Mr. Burns in his relentless attacks against the Mayor, Council and staff; and apparently few have taken the time to research the issues. Even the highly respected citizens who constitute the Montreat Grassroots, while purporting to support the Council and the principles upon which Montreat was founded in their mission statement, have not taken the time to explore and research both sides of the issues, seemingly willing to abide only by Mr. Burns' version. It has become evident that the Montreat Grassroots, while ostensibly subscribing to a benevolent mission of support, is a device used by a few to serve personal agendas.

I request, as a citizen of Montreat, that Council take immediate action to remove Wade Burns from the Planning and Zoning Commission completely. It is untenable that any individual use an appointed position on a town board to serve their personal interests and act in an adversary manner against the governing body. It has contributed to much discord in the community, needless expense of taxpayer monies, and distraction of the Commission from its prescribed duties. Please read this letter in its entirety into the Council's minutes. Thank you for your consideration.

Sincerely,



Daniel I. Cordell, Jr.
100 Alabama Terrace
Montreat, North Carolina 28757

EXHIBIT

FILED

A

May 5, 2003

Mr. and Mrs. William T. Dubose
P.O. Box 670
Widson, N.C. 28036

Dear Mr. and Mrs. Dubose:

Reverend Maxwell called me this morning, distressed by your letter to him of May 31, 2003. He faxed it to me for my consideration.

I am appalled at the arrogant, condescending, judgmental attitude you and members of your family have taken, in a community that prides itself as being Christian. Jack Maxwell is a true Christian minister, living humbly while serving the Lord and those in need. This cottage has been in his family for many, many years and his difficulty in bringing it to your standards is due to his resources being spent elsewhere, such as missionary work in South America and the destitute Appalachian mountains of West Virginia.

Your "sense" of where responsibility lies, as you judge the personal affairs of others, is mistaken. Your "recollection" of the terms of agreements between individuals with whom you have never spoken on this matter, is incorrect. If you are basing "your" recollection on your nephew Wade Burns' reports, you may wish to reconsider your self-serving source. One can easily consult the public records of the Town of Montreat to verify how frequently Wade Burns' "recollections" and reports are false, inaccurate, and misleading.

Reverend Maxwell shared with me the incident a few years ago when Wade Burns offered him a ridiculously small amount to purchase Reverend Maxwell's cottage, and how upset Wade Burns became when Reverend Maxwell refused his offer. Wade Burns has entered this cottage, uninvited, on more than one occasion, to express his unwanted opinions regarding the remodeling of the cottage. He has tried without success to argue his incorrect and false understanding of the North Carolina building code and the Montreat zoning ordinance. It is ludicrous to me that someone who calls himself an architect has such pitifully lacking knowledge of the codes under which he "works".

The terms of my agreements with Reverend Maxwell are not your business, but I will share with you that Reverend Maxwell knows I stand ready, willing and able to perform any task he needs or directs. Last spring, when another "Christian" neighbor, "Reverend" Moley Hitch expressed his poor opinion of Reverend Maxwell's cottage, I suggested to him that if the neighbors care so much about the appearance of the cottage, they might consider assisting Reverend Maxwell financially to obtain what they consider "appropriate living". His response to me was "I wouldn't help Jack Maxwell if he was the last man on earth." So much for your Christian neighborhood and your so-called "reverends".

EXHIBIT

B

and Mrs. William T. Dubose
Page Two

couple of years ago, other arrogant, judgmental neighbors wrote to the Mayor regarding offense to their sensibilities from their neighbor's rustic cottage. As moralizing and disheartening as that was, many others felt Christian joy and pride in words spoken by other caring neighbors in defense of the woman, "Even though there may be some town ordinances that are being violated on her property, she is a good woman, a good neighbor, an elder in our human family, and deserves to be treated with respect and sensitivity."; and "Those of us who live on _____ Lane take great pride in our neighborhood. We've all lived here for at least twenty-five years. Her lifestyle is not at many of us would choose; her home is not modern. I have enormous respect and admiration for a woman who would maintain her ways despite the rush of time and the pressure of people. A person's heart is of much more importance than their property, and she has a heart of gold. She cares about her neighbors and willingly shares what she has. There is a mystery to the human spirit that is partially opened to us as we learn to respect our fellow human beings and accept them for who they are. I firmly believe that there are times when what is morally right takes precedence over the letter of the law. I plan to support her right to live the remainder of her life in the manner of her choosing. If we, as fortunate residents of a beautiful community, cannot be accepting of one another, then despair for our future." I would ask that you carefully ponder these Christian words of charity and compassion spoken by other Montreat residents.

Reverend Maxwell shared with me that your "beliefs" about his "intentions" or "what drives his interests" are unfounded and baseless. Have you ever even discussed your beliefs, his intentions, or his interests with him? No; you are weakly attempting to cloak your self-serving condescension in palatable language. Far from "helping" Jack Maxwell, who is elderly and not in good health, your unasked for "report" has upset and stressed him.

When I decided to move to Montreat to make a home for myself and my young son, I believed that this "Christian" community would help us heal from the scars of divorce and dislocation, and would help me instill in my son a true sense of Christian spirit and values. I believe that this is the "spirit and mission" of Montreat. Your family's and your neighbors' arrogance, and the constant agitation in the community by your dishonest and self-serving nephew, Wade Burns, with his absolutely false and incorrect misinformation, has re-drawn my impressions of this community. I can only hope that Jack Maxwell's humble cottage, standing as it does in need of repairs as he spends his resources on those even less fortunate than we are, may serve as a small reminder to you of the Christian values of humility, charity, and gratitude.

Sincerely,



Daniel Cordell

P.O. Box 1085, Montreat, NC 28757

Cc: Jack Maxwell; Mr. and Mrs. James L. Morgan; Mrs. Jane Gaw Ragland
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